IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.364 OF 2005

Mohammed Maulana ... Appellant

Vs.

Municipal Corporation of
Greater Bombay. ... Respondents

Mr. P.K. Dhakephalkar with Ms. Geeta Shastri i/b M/s. Khilnani & Co. for the appellant.

Mr. J. Xavier for the B.M.C.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 3RD MARCH, 2005.**

**P.C.:-**

1. Admit. By consent of the parties, taken up for final hearing forthwith.

2. The appellant is the original plaintiff. He has challenged in this first appeal the judgment and decree dated 13/1/2005 passed by the City Civil Court at Bombay in Suit No.3541 of 1997 whereby the suit was dismissed. In the suit, the plaintiff had prayed that the notice issued by the respondent-corporation under section 351 of the B.M.C. Act dated 21/5/1997 and the order of the Deputy Municipal Commissioner, Zone-I, dated 31/7/1997 are illegal, malafide, bad in law and for an order restraining the defendant from removing and/or demolishing the suit shop mezzanine floor and the cabin bearing No.27, The Arcade World Trade Centre, Cuffe

Parade, Bombay - 400 005, in pursuance of the said notice dated 21/5/1997 and the order of the Deputy Municipal Commissioner, Zone-I dated 31/7/1997.

3. I have heard Mr. Dhakephalkar, the learned counsel appearing for the appellant and Mr. Xavier, the learned counsel appearing for the B.M.C. Mr. Dhakephalkar pointed out that the respondent-corporation has not filed its written statement. The plaintiff has adduced his own evidence. He has been cross-examined. The plaintiff tendered documents in support of his case. It was, therefore, improper for the trial court to dismiss the suit when the defendant-corporation has not even refuted the averments made in the plaint.

4. Mr. Xavier, the learned counsel for the corporation states that the suit may be remanded back to the trial court and liberty may be given to the corporation to file the written statement and the trial court may be directed to dispose of the same within a time frame set by this court. In the circumstances of the case and in the interest of justice, in my opinion, the following order will meet the ends of justice.

5. The L.C. Suit No.3541 of 1997 is remanded to the trial court. The defendant is directed to file its written statement within eight weeks from today. The trial court shall take the written statement on file. The trial court shall decide the suit afresh after giving liberty to both sides to adduce evidence and make

submissions. The trial court shall dispose of the suit within a period of six months from the date of receipt of this order by it. The respondent-corporation shall not take any action pursuant to the impugned notice and the impugned order of the Deputy Municipal Corporation, till such time as the suit is disposed of. The parties shall appear before the trial court on 5/4/2005.

6. The first appeal is disposed of in the aforestated terms along with the connected civil application.

7. All concerned to act on authenticated copy of this order.

(SMT. RANJANA DESAI, J.)